



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0998]

RIN 1625-AA00

Safety Zone; Pensacola Bay, Pensacola, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for all navigable waters on Pensacola Bay within 500 yards of the construction of the new Pensacola Bay Bridge in Pensacola, FL. The purpose of the safety zone is to protect personnel, vessels, and the marine environment from potential hazards created by work performed during the construction of the new bridge located across the Pensacola Bay. This rulemaking restricts speed to an idle speed or slowest safe speed for all vessels, mariners, and persons unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until December 31, 2020. For the purposes of enforcement, actual notice will be used from February 7, 2018 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5940, email Kyle.D.Berry@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Mobile
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The construction of the Pensacola Bay Bridge has advanced to the phase requiring the presence of vessels, barges, and cranes that are now working in and around the main navigation channel and other areas frequently navigated by recreational vessels. Hazards associated with this phase of the construction include accidental falling debris, submerged objects, collision, allision, and other navigational hazards. It is impracticable

to publish an NPRM because we must establish this safety zone immediately to prevent injury to persons and vessels and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), and for the reasons stated above, the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be contrary to public interest because of the potential safety hazards associated with the work.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector Mobile (COTP) has determined that potential hazards associated with the bridge work that is currently on going will be a safety concern for anyone within 500 yards of the construction of the new Pensacola Bay Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge work is being completed.

IV. Discussion of the Rule

This rule establishes a temporary safety zone effective from February 7, 2018 until December 31, 2020 on Pensacola within 500 yards of the construction of the new Pensacola Bay Bridge in Pensacola, FL. The safety zone is needed protect life and property from the hazards associated with the construction of the new bridge on Pensacola Bay. This rulemaking restricts speed to an idle speed or slowest safe speed for all vessels, mariners, and persons unless specifically authorized by the COTP or a

designated representative. The duration of the zone is intended to ensure the safety of people and vessels on these navigable waters during the construction of the new bridge.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, and duration of the rulemaking. This safety zone will be in place within 500 yards of the construction of the new Pensacola Bay Bridge until the estimated completion of the bridge on December 31, 2020. Vessels are permitted to enter the safety zone, but must do so at idle or the slowest safe speed. Additionally, the Coast Guard will issue Broadcast Notices to Mariners via VHF-FM marine channel 16 about the regulation so that waterway users may plan accordingly for transits during this restriction.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires

federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of federal employees who enforce, or otherwise determine compliance with, federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under executive order 13132, federalism, if it has a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in executive order 13132.

Also, this rule does not have tribal implications under executive order 13175, consultation and coordination with Indian Tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zone within 500 yards of the construction of the new Pensacola Bay Bridge on Pensacola Bay, Pensacola, FL. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0998 to read as follows:

§ 165.T08-0998 Safety Zone; Pensacola Bay, Pensacola, FL.

(a) Location. The following area is a temporary safety zone: all navigable waters of the Pensacola Bay within 500 yards of the construction of the new Pensacola Bay Bridge.

(b) Enforcement period. This section will be enforced from February 7, 2018 through December 31, 2020.

(c) Regulations. In accordance with the general regulations in §165.23, persons and vessels entering this safety zone must transit at idle or the slowest safe speed and comply with all lawful directions issued by the Captain of the Port Sector Mobile (COTP) or a designated representative.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: February 7, 2018.

M.R. MCLELLAN,
Captain, U. S. Coast Guard,
Captain of the Port Sector Mobile.

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